

# **Board of Contract Appeals**

General Services Administration  
Washington, D.C. 20405

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July 26, 2006

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GSBCA 16868-RELO

In the Matter of GUSTAVE R. OLSON

Gustave R. Olson, Chugiak, AK, Claimant.

Shirley Lee Autry, Deputy Director, Finance Center, United States Army Corps of Engineers, Millington, TN, appearing for Department of the Army.

**GOODMAN**, Board Judge.

Claimant, Gustave R. Olson, is an employee of the United States Army Corps of Engineers. He has asked this Board to review the agency's denial of reimbursement of certain costs arising from the purchase of a home at his new duty station as the result of a permanent change of station.

## Factual Background

In December 2005, claimant purchased a home at his new duty station in Alaska. During the construction of the home, claimant paid directly for various items to complete the construction of his home -- light fixtures, earthwork, construction of a deck, built-in appliances, locks, hardware, and bathroom finishes. At settlement, \$4883.78, which claimant asserts was the total amount claimant paid for these items, was designated on the settlement sheet as "Seller Credit to Close." When claimant noted at the settlement that this designation might cause confusion, as it erroneously implied that the seller was offering a credit incentive to close rather than simply crediting claimant for items which he had prepaid, the settlement agent was adamant in having the documents signed "as is" so as not to delay the settlement, but agreed to write a clarifying letter later, if necessary.

Claimant thereafter sought reimbursement of his real estate expenses from the agency in the amount of \$5963.15, which did not include any of the costs designated as “Seller Credit to Close.”<sup>1</sup> The agency determined that of the \$5963.15 of real estate expenses claimed, claimant was only entitled to \$2205, as some of the costs claimed were not reimbursable.<sup>2</sup> However, the agency assumed that the amount of \$4883.78 noted as “Seller Credit to Close” was realty expenses paid by the seller, and a portion of the \$5963.15 for which claimant sought reimbursement. The agency then concluded that the \$4883.78 represented real estate expenses not actually incurred by claimant and reduced the amount it had determined claimant was due, \$2205, by 81.8%, the ratio of the “Seller Credit to Close” to the total real expenses claimed ( $\$4883.78 \div \$5963.15$ ), and paid claimant \$399.13.

Claimant submitted information to the agency to indicate that the costs included in the \$4883.78 “Seller Credit to Close” were for prepaid items not included in the real estate expenses for which he sought reimbursement and did not represent the seller’s payment of his real estate expenses. The agency affirmed its decision reducing the amount of the real estate expenses to be reimbursed based upon its conclusion that claimant had submitted a request for real estate expenses that were not actually incurred by claimant. Claimant has asked this Board to review the agency’s decision.

### Discussion

In denying reimbursement of certain real estate costs, the agency relies upon the Joint Travel Regulations (JTR), which provide with regard to real estate expenses:

Employees Must Actually Incur the Expenses. An employee shall be reimbursed only for expenses actually incurred and paid by the employee or dependent(s), reimbursement is limited to the portion actually paid by the employee and/or dependent(s).

JTR C14000-F.

The agency also relies upon our decision in *Terence F. Smith*, GSBCA 15695-RELO, 02-2 BCA ¶ 31,954. In that case, the seller actually paid the closing costs, and according to

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<sup>1</sup> The \$5963.15 in realty expenses claimed included loan origination fee, loan discount, credit report, document preparation fee, flood certification fee, interest, hazard insurance, city property taxes, settlement fee, title insurance, and recording fees.

<sup>2</sup> Claimant does not contest the agency’s determination that he is only entitled to reimbursement of \$2205 of the real estate expenses claimed.

the purchase agreement the closing costs were paid by the seller in exchange for the purchaser forgiving the seller's obligation to provide certain enumerated repairs required to be performed by the seller as a result of the home inspection.

A review of the information provided by claimant in this case<sup>3</sup> shows that the costs noted as "Seller Credit to Buyer" were for items used in the construction of the house by the builder for which the claimant paid. We conclude based on this information that these costs were not included in the real estate expenses for which claimant sought reimbursement and did not represent real estate expenses which were paid by the seller on the claimant's behalf. All real estate expenses for which claimant sought reimbursement were actually incurred by claimant. The agency therefore has no basis for reducing reimbursement of the realty expenses in the amount \$2205 to which the agency found claimant was entitled.

#### Decision

The claim is granted.

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ALLAN H. GOODMAN  
Board Judge

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<sup>3</sup> This information included 1) an itemized list totaling \$3883.78, 2) a letter from claimant explaining that the value of the itemized list was increased by \$1000 on the settlement sheet to reflect the value of landscaping and deck construction not completed by seller at the time of settlement, and 3) letters from the realtor and the title company explaining that these costs were items prepaid by the claimant and not settlement costs paid by the seller.